

NATIONAL  
INDIAN  
GAMING  
COMMISSION

NOV 22 1995

Mr. Kip A. Kubin  
Payne & Jones, Chartered  
Commerce Terrace  
College Boulevard at King  
11000 King  
P.O. Box 25625  
Overland Park, Kansas 66225

Dear Mr. Kubin:

By letter received by the National Indian Gaming Commission (NIGC) on October 23, 1995, you appealed, on behalf of the Miami Tribe of Oklahoma (Miami or Tribe or Appellant) and the Modoc Tribe of Oklahoma (Modoc or Tribe or Appellant), the decision of the Chairman disapproving the management contract between the Miami Tribe, Modoc Tribe, and Butler National Service Corporation. Chairman Monteau issued a decision letter disapproving the management contract on September 6, 1995.

Pursuant to 25 C.F.R. § 539.2, "an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination . . . ." The Chairman served his determination via facsimile on September 6, 1995. Service by facsimile is complete upon transmission. 25 C.F.R. § 519.3(a)(5). The parties then had until October 6, 1995, to file an appeal with the Commission. NIGC regulations state that "failure to file an appeal within the time provided . . . shall result in a waiver of the opportunity for an appeal." 25 C.F.R. § 539.2. Since this appeal was not filed with the Commission until October 23, 1995, the Miami and Modoc Tribes have waived their opportunity for appeal and the Chairman's decision of September 6, 1995, constitutes final agency action. The Chairman does not have the discretion to extend the time for appeal, as requested by your secretary, Ms Deborah L. Turner. Therefore, your appeal is hereby dismissed.

Furthermore, even if the appeal were to be heard by the Commission on the merits, you have not sufficiently explained the reasons you believe the Chairman's determination to be erroneous. The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2711, authorizes the Chairman to approve management contracts subject to the standards established in the NIGC's implementing regulations and other applicable federal law. Chairman Monteau determined that the contract at issue failed to meet these requirements and three grounds were identified specifically in the Chairman's disapproval letter. You list four grounds for

appeal, none of which are supported by any documentation nor do they relate specifically to the grounds for disapproval listed in the Chairman's letter.

In response to your grounds for appeal, the disapproval is in full accordance with the law and the contract was reviewed on the merits. Second, the findings of the Chairman are supported by the fact that required submissions were not forwarded to the NIGC and the proposed gaming site was not authorized by the compact. Third, the actions of the Chairman and reasons for his decision are fully described in the disapproval letter of September 6, 1995, and do not constitute abuse of discretion. Finally, deficiency letters are not required to be sent to tribes before the Chairman takes action on a contract.

We concur with the Chairman's finding that the contract was not submitted in accordance with 25 C.F.R. § 533.3. A three year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters was not submitted, as required by 25 C.F.R. § 533.3(e). Your appeal neither specifies the reasons you believe this determination to be erroneous, nor does it include any supporting documentation to the contrary as required by 25 C.F.R. § 539.2.

Second, we concur with the Chairman's finding that the proposed site for the gaming facility is not an authorized site for class III gaming under the approved compact between the Miami Tribe and the State of Oklahoma. Your appeal neither specifies the reasons you believe this determination to be erroneous, nor does it include any supporting documentation to the contrary as required by 25 C.F.R. § 539.2.

Third, the IGRA requires that the Chairman either approve or disapprove a management contract within 180 days from the date the contract is submitted, unless the Chairman notifies the Tribe and the management contractor in writing of the need for an extension of up to 90 days. Since the maximum statutory time period within which the Chairman is directed to take action on a management contract had expired and the Chairman was not in a position to approve the contract for the reasons stated above, we concur with the Chairman's decision to disapprove the contract. See 25 U.S.C. § 2711 and 25 C.F.R. § 533.4.

Therefore, as previously stated, Appellants' appeal is dismissed for failure to file within the required thirty day period. Furthermore, Appellants failed to establish that the Chairman's decision was erroneous, arbitrary and capricious, an abuse of discretion, or contrary to applicable law or procedures.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold A. Monteau", with a large, sweeping underline.

Harold A. Monteau  
Chairman

A handwritten signature in cursive script, appearing to read "Tom Foley", with a large, sweeping underline.

Tom Foley  
Associate Commissioner

A handwritten signature in cursive script, appearing to read "Jana McKeag", with a large, sweeping underline.

Jana McKeag  
Associate Commissioner